

ASSEMBLY BILL

No. 2529

Introduced by Assembly Member Fuentes

February 19, 2010

An act to add Article 5.5 (commencing with Section 11348.5) to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2529, as introduced, Fuentes. State agencies: regulations: review.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

This bill would adopt the regulatory philosophy and the principles of regulation, as outlined in Presidential Executive Order 12866, in order to achieve the same regulatory benefits within the state. This bill would require the Department of Finance to assist state agencies with the review of new and existing regulations for compliance and consistency with these requirements, and to review analyses performed by agencies in promulgating new regulations or in reviewing existing regulations.

This bill would require an agency to annually provide to the department a list of its planned regulatory actions for that year, as specified, and indicate the actions which the agency believes are significant regulatory actions, as defined. This bill would require an agency, for each significant regulatory action, to submit prescribed information to the director at least 30 days prior to issuing a notice of proposed action, as specified. The bill would require the director to review the submitted information, as specified. This bill would require

the department, in order to establish a baseline for the determination of the costs and benefits of significant regulatory actions that it reviews, to complete a review of all significant regulatory actions completed by state agencies since January 1, 2004, and summarize the costs and benefits of those actions in a report to be completed prior to July 1, 2011.

This bill would require the Governor to convene an interagency group with specified duties for the purpose of formulating an effective methodology for performance of the analysis and cost-benefit studies by state agencies, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 5.5 (commencing with Section 11348.5)
2 is added to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the
3 Government Code, to read:

4
5 Article 5.5. Regulatory Planning and Review

6
7 11348.5. For purposes of this article, the following terms shall
8 have the following meanings:

9 (a) “Department of Finance” or “department” shall have the
10 same meaning as Section 13000.

11 (b) “Director of Finance” or “director” shall have the same
12 meaning as Section 13001.

13 (c) “Significant regulatory action” means a regulatory action
14 that is likely to result in a regulation that may result in any one of
15 the following:

16 (1) Have an annual cost to the state’s economy of ten million
17 dollars (\$10,000,000) or more or have a material adverse effect
18 on the economy, productivity, competition, public health or safety,
19 local governments, or tribal communities.

20 (2) Create a serious inconsistency with, or otherwise interfere
21 with, an action taken or planned by another agency.

22 (3) Materially alter the budgetary impact of entitlements, grants,
23 user fees, or loan programs, or the rights and obligations of its
24 recipients.

1 (4) Raise novel legal or policy issues arising out of legal
2 mandates or involving the regulatory philosophies and principles
3 expressed in Section 11348.6.

4 11348.6. (a) The Legislature finds and declares all of the
5 following:

6 (1) An efficient regulatory planning and review process is vital
7 to ensure that the state's regulatory system best serves the people
8 of this state.

9 (2) There is a need for adequate information indicating the need
10 for and consequences of proposed regulatory actions, and that state
11 agencies should establish that potential benefits to the state justify
12 any potential costs of regulatory actions.

13 (3) In 1993, President Clinton reviewed and revised the federal
14 government's program for regulatory review and issued Executive
15 Order 12866, titled "Regulatory Planning and Review,"
16 establishing the general principle that the benefits of intended
17 regulations should justify the costs.

18 (4) Executive Order 12866 focused on the most significant rules,
19 established a 90-day period of review of proposed rules, and
20 increased the openness and accountability of the federal process
21 for reviewing regulations.

22 (5) The federal Office of Management and Budget monitored
23 and assessed the implementation of Executive Order 12866,
24 concluding that significant improvements were made in all of the
25 following six broad areas of federal regulation:

26 (A) Properly identifying problems and risks to be addressed,
27 and tailoring the regulatory approach narrowly to address them.

28 (B) Developing alternative approaches to traditional command
29 and control regulation, such as using performance standards that
30 tell people what goals to meet instead of how to meet them, relying
31 on market incentives, or issuing nonbinding guidance instead of
32 rules and regulations.

33 (C) Developing rules that, according to sound analysis, are
34 cost-effective and have benefits that justify their cost.

35 (D) Consulting with those affected by the regulation, particularly
36 state, local, and tribal governments.

37 (E) Ensuring that agency rules are well coordinated with rules
38 and policies of other agencies.

(b) In order to achieve the benefits associated with Executive Order 12866, this state adopts the following regulatory philosophy, as outlined in Section 1(a) of Executive Order 12866:

(1) Agencies should promulgate only those regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of Californians.

(2) In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures, to the fullest extent that these can be usefully estimated, and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity, unless a statute requires another regulatory approach.

(c) (1) In order to achieve the benefits associated with Executive Order 12866, this state adopts the principles of regulation contained in this subdivision, as outlined in Section 1(b) of Executive Order 12866.

(2) To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles to the extent permitted by law and where applicable:

(A) Each agency shall identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as assess the significance of that problem.

(B) Each agency shall examine whether existing regulations, or other law, have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations, or other law, should be modified to achieve the intended goal of regulation more effectively.

(C) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable

1 permits, or providing information upon which choices can be made
2 by the public.

3 (D) In setting regulatory priorities, each agency shall consider,
4 to the extent reasonable, the degree and nature of the risks posed
5 by various substances or activities within its jurisdiction.

6 (E) When an agency determines that a regulation is the best
7 available method of achieving the regulatory objective, it shall
8 design its regulations in the most cost-effective manner to achieve
9 the regulatory objective. In doing so, each agency shall consider
10 incentives for innovation, consistency, predictability, the costs of
11 enforcement and compliance, to the government, regulated entities,
12 and the public, flexibility, distributive impacts, and equity.

13 (F) Each agency shall assess both the costs and the benefits of
14 the intended regulation and, recognizing that some costs and
15 benefits are difficult to quantify, propose or adopt a regulation
16 only upon a reasoned determination that the benefits of the intended
17 regulation justify its costs.

18 (G) Each agency shall base its decisions on the best reasonably
19 obtainable scientific, technical, economic, and other information
20 concerning the need for, and consequences of, the intended
21 regulation.

22 (H) Each agency shall identify and assess alternative forms of
23 regulation and shall, to the extent feasible, specify performance
24 objectives, rather than specifying the behavior or manner of
25 compliance that regulated entities must adopt.

26 (I) Wherever feasible, agencies shall seek views of appropriate
27 state, local, and tribal officials before imposing regulatory
28 requirements that might significantly or uniquely affect those
29 governmental entities. Each agency shall assess the effects of
30 federal regulations on state, local, and tribal governments, including
31 specifically the availability of resources to carry out those
32 mandates, and seek to minimize those burdens that uniquely or
33 significantly affect those governmental entities, consistent with
34 achieving regulatory objectives. In addition, as appropriate,
35 agencies shall seek to harmonize federal regulatory actions with
36 related state, local, and tribal regulatory and other governmental
37 functions.

38 (J) Each agency shall avoid regulations that are inconsistent,
39 incompatible, or duplicative with its other regulations or those of
40 other federal agencies.

1 (K) Each agency shall tailor its regulations to impose the least
2 burden on society, including individuals, businesses of differing
3 sizes, and other entities, including small communities and
4 governmental entities, consistent with obtaining the regulatory
5 objectives, taking into account, among other things, and to the
6 extent practicable, the costs of cumulative regulations.

7 (L) Each agency shall draft its regulations to be simple and easy
8 to understand, with the goal of minimizing the potential for
9 uncertainty and litigation arising from such uncertainty.

10 11348.7. (a) The department shall assist state agencies to
11 review new and existing regulations for compliance and
12 consistency with this article, and shall review analyses performed
13 by agencies in promulgating new regulations or in reviewing
14 existing regulations.

15 (b) Prior to January 1 of each year, a state agency shall provide
16 the department, at the time and in the manner specified by the
17 director, with a list of its planned regulatory actions for that year
18 and indicate the actions which the agency believes are significant
19 regulatory actions. A planned regulatory action that is not
20 designated as significant, absent a material change in the
21 development of that regulatory action, shall not be subject to review
22 under this section unless, within 10 days of receipt of the list, the
23 director notifies the agency that he or she has determined that a
24 planned regulation is a significant regulatory action.

25 (c) (1) For each significant regulatory action, the agency shall
26 submit to the director for review, at least 30 days prior to the
27 issuance of a notice of proposed action required pursuant to Section
28 11346.4, all of the following:

29 (A) The text of the draft regulatory language, together with a
30 reasonably detailed description of the need for the regulatory action
31 and an explanation of how the regulation will meet that need.

32 (B) An analysis of the potential costs and benefits of the
33 regulatory action, including an explanation of the manner in which
34 the regulatory action is consistent with the statutory mandate.

35 (2) For each significant regulatory action that satisfies the
36 criteria of paragraph (1) of subdivision (c) of Section 11348.5, the
37 agency shall also submit to the director for review, at least 30 days
38 prior to the issuance of a notice of proposed action required
39 pursuant to Section 11346.4, all of the following:

1 (A) An assessment, including the underlying analysis, of benefits
2 anticipated from the regulatory action, including, but not limited
3 to, the promotion of the efficient functioning of the economy and
4 private markets, the enhancement of health and safety, the
5 protection of the natural environment, and the elimination or
6 reduction of discrimination or bias, together with, to the extent
7 feasible, a quantification of those benefits.

8 (B) An assessment, including the underlying analysis, of costs
9 anticipated from the regulatory action, including, but not limited
10 to, the direct cost to both the government in administering the
11 regulation and to businesses and others in complying with the
12 regulation, and any adverse effects on the efficient functioning of
13 the economy, private markets, including productivity, employment,
14 and competitiveness, health, safety, and the natural environment,
15 together with, to the extent feasible, a quantification of those costs.

16 (C) An assessment, including the underlying analysis, of costs
17 and benefits of potentially effective and reasonably feasible
18 alternatives to the planned regulation, identified by the agencies
19 or the public, including improving the current regulation and
20 reasonably viable nonregulatory actions, and an explanation why
21 the planned regulatory action is preferable to the identified potential
22 alternatives.

23 (d) No agency considering a significant regulatory action shall
24 issue a notice of proposed action pursuant to Section 11346.4 prior
25 to the department's completion of the review of the proposed
26 regulation and the agency's compliance with the requirements of
27 this article.

28 (e) The director shall review the agency's submitted analysis
29 of new, amended, or existing regulations for consistency with the
30 regulatory philosophy and principles of regulation enumerated in
31 Section 11348.6. If the director determines that a planned
32 regulatory action may be inconsistent with the regulatory
33 philosophy and principles of regulation enumerated in Section
34 11348.6, the director shall notify the agency in writing.

35 (f) The agency shall include in its initial statement of reasons,
36 required pursuant to Section 11346.2, the director's analysis of
37 new, amended, or existing regulations, and the agency's responses
38 to any determinations made by the director.

39 (g) The agency shall reimburse the department for the cost to
40 the department of the analysis, not to exceed 5 percent of the total

1 cost of developing the regulation. The agency shall build the cost
2 of reimbursement into the cost of developing the regulation.

3 (h) In order to establish a baseline for the determination of the
4 costs and benefits of significant regulatory actions reviewed
5 pursuant to this article, the department shall complete a review of
6 all significant regulatory actions completed by state agencies since
7 January 1, 2004, and summarize the costs and benefits of those
8 actions. This review shall be completed prior to July 1, 2011.

9 11348.8. (a) In order to formulate an effective methodology
10 for performance of the analysis and cost-benefit studies by state
11 agencies pursuant to this article, by January 31, 2011, the Governor
12 shall convene an interagency group, to be chaired by the director,
13 to review the state of the art for analysis of regulatory action in
14 California at the state, regional, and local levels.

15 (b) Prior to July 1, 2011, the director shall issue a “best
16 practices” report to the Legislature, detailing the findings of the
17 interagency group regarding the state of the art for regulatory action
18 analyses and proposing standard methods of regulatory analysis
19 for use by state agencies.

20 11348.9. Nothing in this article affects the current requirement
21 of state agencies to prepare an economic analysis of a proposed
22 regulation’s potential for adverse economic impact on businesses
23 and individuals pursuant to Section 11346.3, or to make those
24 economic impact analyses available for public comment in the
25 initial state of reasons for the proposed regulation pursuant to
26 Section 11346.2.